

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RESTORE PUBLIC TRUST,
1875 Connecticut Avenue NW, 10th Floor
Washington, DC 20009-6046

Plaintiff,

v.

U.S. DEPARTMENT OF TRANSPORTATION,
1200 New Jersey Avenue SE
Washington, DC 20590

Defendant.

Case No. 19-cv-1677

COMPLAINT

1. Plaintiff Restore Public Trust brings this action against the U.S. Department of Transportation under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, Restore Public Trust is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff Restore Public Trust is a public interest organization that promotes accountability and transparency in government to root out corruption and malfeasance. It is designed to serve as a critical resource for policymakers and elected officials investigating public corruption, members of the public looking for more information about what their government is or is not doing, and journalists examining the alleged malfeasance of government officials. It uses the information it gathers, and its analysis of that information, to educate the public through reports, press releases and other media. Restore Public Trust also makes the material it gathers available on its public website.

6. Defendant the U.S. Department of Transportation (DOT) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOT has possession, custody, and control of the records that Restore Public Trust seeks.

STATEMENT OF FACTS

7. In late 2018 and early 2019, Restore Public Trust submitted two FOIA requests to DOT seeking records related to Secretary Elaine Chao.

Foremost Group FOIA Request

8. On December 4, 2018, Restore Public Trust submitted a FOIA request to DOT seeking all correspondence involving certain DOT custodians containing one of a list of search terms relating to the Foremost Group. The request also sought all correspondence between those same DOT custodians that included certain named individuals. A copy of the Foremost Group FOIA Request is attached hereto as Exhibit A and incorporated herein.

9. On December 17, 2018, DOT sent Restore Public Trust an acknowledgement letter assigning the request tracking number 2019-79.

10. Restore Public Trust has not received any further correspondence from DOT regarding the Foremost Group FOIA Request.

Travel Expenses FOIA Request

11. On March 28, 2019, Restore Public Trust submitted a FOIA request with DOT seeking records demonstrating the total costs reimbursed or paid by DOT for travel expenses associated with Secretary Elaine Chao. A copy of the Travel Expenses FOIA Request is attached hereto as Exhibit B and incorporated herein.

12. On April 11, 2019, Restore Public Trust received an acknowledgement letter from DOT assigning the request tracking number 2019-224.

13. Restore Public Trust has not received any further correspondence from DOT regarding the Travel Expenses FOIA Request.

Exhaustion of Administrative Remedies

14. As of the date of this complaint, DOT has failed to (a) notify Restore Public Trust of any determination regarding its FOIA requests, including the scope of any responsive records DOT intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

15. Through DOT's failure to respond to Restore Public Trust's FOIA requests within the time period required by law, Restore Public Trust has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Responsive Records

16. Restore Public Trust repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

17. Restore Public Trust properly requested records within the possession, custody, and control of DOT.

18. DOT is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

19. DOT has failed to promptly review agency records for the purpose of locating those records which are responsive to Restore Public Trust's FOIA requests.

20. DOT's failure to conduct an adequate search for responsive records violates FOIA.

21. Plaintiff Restore Public Trust is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Restore Public Trust's FOIA requests.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

22. Restore Public Trust repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

23. Restore Public Trust properly requested records within the possession, custody, and control of DOT.

24. DOT is an agency subject to FOIA and must therefore release in response to a FOIA requests any non-exempt records and provide a lawful reason for withholding any materials.

25. DOT is wrongfully withholding non-exempt agency records requested by Restore Public Trust by failing to produce non-exempt records responsive to its FOIA requests.

26. DOT is wrongfully withholding non-exempt agency records requested by Restore Public Trust by failing to segregate non-exempt information in otherwise exempt records responsive to Restore Public Trust's FOIA requests.

27. DOT's failure to provide all non-exempt responsive records violates FOIA.

28. Plaintiff Restore Public Trust is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Restore Public Trust respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Restore Public Trust's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Restore Public Trust's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Restore Public Trust's FOIA requests;
- (4) Award Restore Public Trust the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Restore Public Trust such other relief as the Court deems just and proper.

Dated: June 10, 2019

Respectfully submitted,

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

D.C. Bar No. 1002367

AMERICAN OVERSIGHT

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